

ARTICLE VIII. STORMWATER UTILITY*

*Editor's note: Ord. No. 11083, § 1, adopted April 23, 1997, suspended the former storm water regulations, Art. VIII, and enacted new provisions as herein set out on an interim basis pending the results of judicial review of the former regulations. Sections 2--4 of Ord. No. 11083 provide as follows:

Section 2. This ordinance shall be effective upon passage. Existing ordinance sections bearing the same numbers shall be suspended during the time period this ordinance is effective.

Section 3. The city council may terminate this ordinance through a resolution or ordinance which specifically provides for its termination. Such resolution or ordinance may also provide for the reinstatement of the ordinance which has been temporarily suspended through the enactment of this ordinance.

Section 4. All ordinance sections and subsections previously enacted in connection with the city's stormwater program and not specifically replaced by this interim ordinance above are hereby ratified and continued in force. These include but are not limited to Sections 23-2, 23-47, 23-47(a), 23-47.1(b) and (c), and 23-50.

Former Art. VIII, Divs. 1--3, derived from the following:

TABLE INSET:

Ord. No.	Section	Date
10183	1	6- 6-94
10243	1	7-18-94
10308	2	10-24-94

TABLE INSET:

Ord. No.	Section	Date
10352	2	12-19-94
10599	1	9-18-95
10600	--	9-18-95

DIVISION 1. GENERALLY

Sec. 23-200. Findings.

- (a) Storm water poses a threat to the public health, safety, and welfare because it floods properties, erodes watercourses and channels, and pollutes streams and rivers.
- (b) By mapping, planning, constructing, operating, cleaning, regulating and maintaining natural and constructed storm water management facilities, the city reduces the adverse effects of storm water and improves the quality of groundwater, streams, rivers, and lakes in and around the city.
- (c) Providing a stable source of funding for the activities heretofore described can best be accomplished through the creation of a storm water utility. Such a utility will benefit owners and occupants of developed land in the city and other Durham citizens.
- (d) The amount of impervious surface on a property is the single most important factor affecting the peak rate of runoff, the total volume discharged, and pollutant loadings of storm water that flows from property. It is equitable to fund a storm water utility through a system in which service charges are based on the amount of impervious surface on developed land.

(Ord. No. 11083, § 1, 4-23-97)

Sec. 23-201. Definitions applicable to article.

All definitions found elsewhere in Chapter 23 apply in this article, in addition to the ones below, unless the context of the article language clearly indicates otherwise. The city engineer is authorized to interpret and to apply these definitions. If a property could be interpreted to fall into more than one (1) category the city engineer shall determine the applicable category.

Customer or *consumer* means the person or entity to which a bill for storm water service charges is sent. This may include the owner, occupant, or tenant of property, a homeowner's association with responsibility for property or for common areas associated with property, or a person or entity who has requested in writing to be billed for stormwater service charges for a property.

Developed land means property that contains impervious surface, and includes improved land without structures and land on which improvements are under construction, with the exception of city streets.

Equivalent Residential Unit (ERU) is two thousand four hundred (2,400) square feet of impervious surface, which is the average amount of impervious surface on a single family property in the city.

Impervious surface means a surface which, because of its composition or compacted nature, impedes or prevents natural infiltration of water into the soil, including, but not limited to, roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel

surfaces. Wooden slatted decks and the water area of swimming pools are considered pervious.

Other residential and nonresidential land means any developed land not fitting the definition of a residential unit. It includes, but is not limited to, land upon which there are residential structures that contain more than two (2) units, such as triplexes, townhouses, condominiums, apartments, boarding houses; churches; institutional buildings, whether public or private; commercial, office, and industrial buildings; parking lots, driveways, and private streets; and land containing improvements under construction or impervious surfaces that are not structures, with the exception of city streets.

Property owner or *owner* means the owner of a parcel of land as shown on the Durham County tax records.

Residential unit means a detached single-family house, a duplex, or a manufactured home or mobile home located on an individual lot or parcel of land rather than in a manufactured home park.

Storm water means the runoff from precipitation that travels over natural or developed surfaces to the nearest stream, other conduit, or impoundment and appears in lakes, rivers, ponds, or other bodies of water.

Storm water services means the city program for protection of storm water quality and for the partial control and conveyance of storm water. It includes, without limitation, public education; monitoring, removing, and regulating stormwater pollutants; other activities described in the state-issued NPDES permit; mapping; planning; regulating, reviewing and inspecting private stormwater infrastructure; and operating, cleaning, and maintaining the city's storm water system. The existence of storm water services does not extend the city's ownership or responsibility to portions of the storm water system that are privately owned, nor does it allow the city to control the conveyance of storm water so as to prevent property damage from flooding.

Storm water system or *storm sewer system* means the system of natural and constructed devices for collecting and transporting storm water. It includes, but is not limited to, lakes, ponds, rivers, creeks, open ditches, catch basins, pipes, sewers, drains, culverts, gutters, and other stormwater management facilities, and includes portions that are owned and operated by the city and portions that are owned and operated by private owners or by other public entities.

Storm water utility funds mean the storm water service charges and the interest generated by those charges.

(Ord. No. 11083, § 1, 4-23-97; Ord. No. 12039, § 1, 8-21-00; Ord. No. 12968, § 1, 6-21-04)

DIVISION 2. ESTABLISHMENT OF STORM WATER SERVICE CHARGES AND CREDITS.

Sec. 23-202. Creation of storm water account; activities of the storm water services division.

Storm water service charges and interest generated by such charges shall be placed in a separate city account and shall be used by the city solely for the

operational costs, indirect costs, debt principal and debt service, and establishment of a reserve fund for storm water services.

(Ord. No. 11083, § 1, 4-23-97; Ord. No. 12039, § 2, 8-21-00; Ord. No. 12968, § 1, 6-21-04)

Sec. 23-203. Storm water service charges.

(a) All developed land in the city, whether public or private, shall be subject to a storm water service charge. Exemptions shall not be allowed based on age, tax exemption, or other status of an individual or organization. Service charges may be subject to a credit system as further provided in this article.

(b) Service charges on developed land shall, as of July 1, 2004, be computed as follows:

(1) Residential units shall be charged at two (2) rates: Two dollars and seventeen cents (\$2.17) per month for residential units with less than two thousand (2,000) square feet of impervious surface and four dollars and fifty cents (\$4.50) per month for residential units with two thousand (2,000) square feet or more of impervious surface.

(2) Other residential and nonresidential land shall be charged four dollars and fifty cents (\$4.50) per month for each equivalent residential unit (ERU). ERUs of less than five-tenths (0.5) shall be rounded down and those of five-tenths (0.5) or greater shall be rounded up to the nearest whole number. There will be no service charge for other residential and nonresidential property that contains less than five-tenths (0.5) ERU of impervious surface.

(Ord. No. 11083, § 1, 4-23-97; Ord. No. 12968, § 1, 6-21-04)

Sec. 23-204. Billing method, responsible parties.

(a) Bills for storm water service shall be sent at regular, periodic intervals. Storm water service charges may be billed on a combined utility bill that also contains charges for water and/or sewer service. Storm water service charges that are shown on a combined utility bill may be for a different service period than that used for water and/or sewer service.

(b) Storm water service bills for a property that receives water and/or sewer service may be sent to the customer receiving such service. However, where multiple water and sewer accounts exist for a single parcel, the storm water service bill may be sent to the property owner. Additional guidelines concerning billing will be developed by the city.

(c) The property owner is ultimately responsible for payment of the stormwater service charge for property for which the party billed has not paid the service charge.

(d) Owners and occupants of property may designate which party shall receive the stormwater service bill by completing and properly executing a form provided by the city. Such transfer does not relieve either the owner or occupant from liability for stormwater service charges if they are not paid by the party billed.

(e) Townhouse and condominium developments and other similar properties containing impervious surface in common ownership shall be charged for the total impervious surface of all commonly-owned and individually-owned property

within the development. The stormwater service bill shall be sent to the homeowners' association or, upon official request of the association reflecting a vote in accordance with the association's bylaws, shall be divided in equal shares amongst each unit within the development and sent to the owner or occupant of each unit. A request for per unit billing must contain all information required by the city and shall be binding for the period of time specified by the city. (Ord. No. 11083, § 1, 4-23-97)

Sec. 23-205. Payment provisions, utility termination.

(a) Where storm water service charges appear on a combined utility bill, and a customer does not pay the service charges for all the utilities on the bill, the partial payment will be applied to the respective service charges in the following order: delinquent storm water charges; delinquent water and/or sewer charges; capital facilities fees; current storm water charges; current water and/or sewer charges.

(b) Storm water service charges are due at the collection office in city hall within twenty-one (21) days after a bill has been issued. Bills not paid within this time shall be charged interest at the rate of one (1) per cent per month.

(c) Where a property receives water and/or sewer service, if storm water service charges for that property are not paid, water and/or sewer service to that property may be terminated, whether or not the storm water charges were included on a combined utility bill. Termination will be handled in accordance with sections 23-47, 23-47.1, and 23-48 of this chapter regarding notice, appeal, and termination of utility service. Where storm water service charges have not been included on a combined utility bill for a property, water and/or sewer service to that property will not be terminated unless the city has sent the occupant notice of the unpaid storm water service charge and possible utility termination at least thirty (30) days prior to the termination.

(d) No property for which storm water service charges are outstanding is entitled to receive water and/or sewer service until the outstanding storm water service charge on that property is paid. No customer with a delinquent storm water service account is entitled to open a water and/or sewer account at the same or different location until the delinquency has been satisfied.

(e) If property is incorrectly billed, or not billed, or a bill is sent to the wrong party, the city may backbill a property for up to a three-year period.

(f) Customers with complaints about the accuracy of storm water service charges are entitled to a review as provided in section 23-47.1. No charge will be adjusted unless the complaining customer has filed a written complaint with the city within one (1) year of the date the city first sent the customer notice of the charge.

(Ord. No. 11083, § 1, 4-23-97)

Sec. 23-206. Credits.

(a) The city may provide a system of credits against storm water service charges for properties on which storm water facility construction or maintenance substantially mitigates the peak discharge or runoff pollution flowing from such

properties or substantially decreases the city's cost of maintaining the public storm water system. The engineering department will develop written policies to implement the credit system. The amount of credit for maintenance may be limited to properties that have a specified minimum impervious surface area. The city's policies may make credits retroactive to the date storm water service charges were initiated.

(b) A one-hundred-per cent credit, conditioned upon the continued maintenance of the drainage systems on such properties to city standards, shall be provided to the following properties:

(1) Improved public roads, not including internal roads within public facilities, which have been conveyed to and accepted for maintenance by the North Carolina department of transportation and which are used by the public for motor vehicle transportation; and

(2) Railroad corridors and tracks.

(c) The above credits are provided in recognition of the use and utility of the above properties as corridors with independently, regularly improved and maintained drainage systems that pass through numerous private and public properties and that collect and control the drainage through those properties.

(Ord. No. 11083, § 1, 4-23-97; Ord. No. 12968, § 1, 6-21-04)

Secs. 23-207--23-209. Reserved.

DIVISION 3. USE OF STORM WATER UTILITY FUNDS FOR CONSTRUCTION, IMPROVEMENT AND MAINTENANCE

Sec. 23-210. Purpose and definitions.

This division establishes the conditions under which funds from the storm water utility will be used for work on storm water system components located outside of city-owned rights of way. Storm water system components located within city owned rights-of-way play an essential function in carrying storm water and the public impact when such components malfunction is generally greater than when such components are located outside the rights-of-way. Therefore, the first priority use of storm water utility funds is for maintenance of and improvements to storm water system components within city-owned rights-of-way. Storm water utility funds may also be used to fund storm water system construction, improvement, repair, or maintenance on private property and public property outside of city rights-of-way. The city has an interest in helping to assure that components of the storm water system that have a relatively greater impact on the overall system are maintained and/or improved, whether located on public or private property. Such components are generally those that carry in whole or in part runoff from publicly maintained streets. The intent of this section is not to transfer responsibility or liability to the city for components on private property that carry such runoff. Rather, it is to establish priorities for work on such components, and to facilitate their repair and maintenance by making available storm water utility funds for such efforts.

In addition to definitions previously appearing in this ordinance, the definitions below also apply to this section. Interpretation and application of this division shall be by the city engineer, whose decisions are final and not subject to appeal.

Capital projects means drainage construction projects undertaken by the city as part of the capital improvement program, which are part of the city's long range storm water management master plan. These include but are not limited to major channel improvements and construction of storm water management facilities to reduce peak flow or pollution.

Major improvements means the installation of pipe or other conduit, or channel improvements where the design capacity of the system to accommodate the ten-year storm exceeds the capacity of a 24-inch pipe. These include but are not limited to examples listed under minor improvements plus major dredging.

Minor improvements means the installation of pipe or other conduit, or channel improvements where the design capacity of the system to accommodate the ten-year storm is at least as great as the capacity of a 12-inch pipe but does not exceed the capacity of a 24-inch pipe. These include but are not limited to the installation of pipe, catch basins or junction boxes, channel enlargement and minor dredging, installation of riprap or other erosion control measures, and slip lining.

Remedial maintenance means repair costing less than fifty thousand dollars (\$50,000.00) of the damaged storm drainage system to restore it to the same functional state it was in when new. These include but are not limited to replacing broken or missing grates, repair/rebuilding broken inlets, repair/rebuilding headwalls, pipe joint repairs, replacing crushed pipes, major repair of erosion control measures, clearing and snagging channels and any other replacement of a component with the same size or performance capacity.

Routine maintenance means maintenance which allows the storm water system to function properly by keeping it clean and free of blockage, but does not include construction or major repair. These include but are not limited to, cleaning grates and inlets, flushing pipes, removing blockages in pipes, removing litter and debris from channels and ditches, minor clearing of overgrown vegetation and minor repair of erosion control measures.

(Ord. No. 11083, § 1, 4-23-97)

Sec. 23-211. Criteria for use of storm water utility funds for construction and maintenance.

The storm water system component for which storm water utility funds are proposed to be spent must carry, in whole or in part, runoff from publicly maintained streets. In addition, such component must not be owned by an entity which is receiving a one hundred-per cent credit or by an entity which is getting credit for the same type of work. The determination as to whether a component is eligible for storm water utility funding, and the priority category into which the project falls, shall be made by the city engineer and this decision is not subject to appeal. In addition, projects must meet the following criteria:

(1) The property owner, if the owner is not the city, must dedicate an easement at no cost to the city of a width, length, and type specified by the city. The

dedication of such easement shall not relieve the property owner of responsibility or liability for storm water system maintenance;

(2) The project must not be located on property which is undergoing development or redevelopment unless the development/redevelopment project is funded in part by other city funds;

(3) The project shall be the most cost effective to correct the existing problem, as determined by the city engineer. Any excess costs shall be borne entirely by the property owner;

(4) The owner of the private property must pay the applicable owner's share of the cost of the work as determined in section 23-213, based on the preliminary cost estimate prepared by the public works director, to the storm water services division prior to initiation of the work. However, the owner may pay this share on an installment basis in accordance with an installment payment method approved by the city council for storm water system projects;

(5) Major improvements, minor improvements, and remedial maintenance shall fall within one of the priority categories listed in section 23-212.

(Ord. No. 11083, § 1, 4-23-87; Ord. No. 12039, § 3, 8-21-00)

Sec. 23-212. Priority categories for major improvements, minor improvements, and remedial maintenance.

The following priority categories shall be used to determine eligibility for funding and the order in which projects are initiated:

(1) *Priority one:* A clear and immediate danger exists and poses a threat to personal safety or a building's structural integrity;

(2) *Priority two:* A threat exists to personal safety or a building's structural integrity, but the threat is not immediate;

(3) *Priority three:* Neither of the conditions specified in (1) or (2) above exists, but the work would reduce damage to property and financial loss.

(Ord. No. 11083, § 1, 4-23-87)

Sec. 23-213. Amount of funding from storm water utility funds.

The use of storm water utility funds for new construction, improvement, or maintenance projects on property outside the city rights-of-way shall be limited as set forth below. The size and scope of the project shall be determined by the public works director, and this decision is not subject to appeal.

(1) *Capital projects:* One hundred (100) percent funding from storm water utility funds unless specified otherwise by the city council.

(2) *Major improvements:* One hundred (100) percent funding from storm water utility funds for residential units and fifty (50) percent storm water utility, fifty (50) percent property owner, with a maximum cost to each property owner of fifteen thousand (\$15,000.00) for other residential and non-residential property.

(3) *Minor improvements:* One hundred (100) percent funding from storm water utility funds for residential units and fifty (50) percent storm water utility, fifty (50) percent property owner, with a maximum cost to each property owner of ten thousand (\$10,000.00) for other residential and non-residential property.

- (4) *Remedial maintenance*: One hundred (100) percent funding from storm water utility funds for residential units. For projects costing up to five thousand dollars (\$5,000.00), sixty-five (65) percent storm water utility, thirty-five (35) percent property owner, with a maximum cost to each property owner of one thousand dollars (\$1,000.00) for other residential and nonresidential property. For projects costing more than five thousand dollars (\$5,000.00), eighty (80) percent storm water utility and twenty (20) percent each property owner for other residential and nonresidential property.
- (5) *Routine maintenance*: One hundred (100) percent storm water utility.
- (Ord. No. 11083, § 1, 4-23-97; Ord. No. 12039, § 4, 8-21-00)

Sec. 23-213.1. Installment payments.

- (a) The property owner share of the stormwater drainage repair or improvement project cost, as determined in sections 23-211 and 23-213, may be paid in installments.
- (b) The property owner shall submit a request in writing and a completed application for payment of the cost in installments prior to scheduling the stormwater repair or improvement.
- (c) The property owner share of the cost shall be payable in eight (8) equal annual installments. The first installment is due and payable fifty (50) days from the date the city manager or designee approves payment of the cost in installments. Subsequent installments, with accrued interest, shall be due and payable on the same date in each successive year thereafter until the stormwater drainage project cost and interest thereon is paid in full. Installments shall bear interest at the rate of nine (9) percent per annum from the approval date.
- (d) From and after the date that the city manager or designee approves payment of the cost in installments, the cost shall be a lien on the property as provided in Chapter 52, 1998 Session Laws, amending the Charter of the City of Durham. These Charter provisions shall apply when any installment, with accrued interest, is not paid when due.
- (e) The monies collected shall be used by the storm water services division solely for storm water services.
- (Ord. No. 11598, § 1, 11-16-99; Ord. No. 12039, § 5, 8-21-00)

Sec. 23-214. Severability.

If any section, sub-section, paragraph, or clause of this article is held to be invalid or unenforceable, all other sections, sub-sections, paragraphs, and clauses shall nevertheless continue in full force and remain in effect. In addition, if the City's use of funds for any portion of its storm water program is held invalid, all other funded portions of the program shall continue in full force and remain in effect.

(Ord. No. 11083, § 1, 4-23-97)